



Kentucky Department of Workers Claims

Annual Report Fiscal Year 1998-1999

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Highlights FY98

- ◆ DWC completed the redesign of its information system for Y2K. The AS400 is up and running with great accuracy.
- ◆ DWC held a public hearing on November 23, 1998, which included a review of the proposed changes to 803 KAR 25:170, Electronic Filing Regulation, to bring filing statutes and regulations into agreement.
- ◆ 1998 Workers' Compensation Medical Fee Schedule for physicians was adopted. New reimbursement rights were effective January 1, 1999.
- ◆ March 1, 1999, Reimbursement Schedule for hospitals was revised with updated hospital cost-to-charge ratio listing.
- ◆ On May 18, 1999, DWC consulted with Milliman & Robertson and presented a Utilization Review Conference.
- ◆ DWC developed a fatality information agreement exchange with OSHA to monitor work related fatalities to insure prompt delivery of benefits to dependents.
- ◆ DWC's Enforcement Branch successfully implemented a new information capturing system utilizing palmtop computers. The new process significantly reduces the use of paper report forms while ensuring complete, accurate, and timely delivery and management of data.
- ◆ On July 23, 1998, NCCI delivered its 1998 Loss Cost Filing with the Department of Insurance. The overall impact for non-coal mining classifications was a reduction of 3.7% from the September 1, 1997 filing. Subsequent to adoption of House Bill 1 in December 1996, NCCI has made three loss cost filings containing a cumulative reduction of 25.2% for non-coal classifications.
- ◆ On December 17, 1998, The Kentucky Supreme Court ruled that the Specialists employed by the Department of Workers Claims were not engaged in the "unauthorized practice of law," overturning conclusions previously drawn by the state bar association.
- ◆ Three group audits (Workers Guardian SIF, School Boards SIF & KESA) were finalized and the fieldwork was completed on the audit of Forest Industries Self-Insurance Fund.
- ◆ Premium reported by the insurance industry to the Kentucky Workers' Compensation Funding Commission during FY98 decreased by 15.19% from the premiums reported for FY97.
- ◆ DWC has entered into an information sharing agreement with the Revenue Cabinet in an effort to identify employers not in compliance with KRS 342.640.

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**RESOURCEFUL ADMINISTRATION OF
KENTUCKY'S WORKERS' COMPENSATION
PROGRAM AND EQUITABLE AND EXPEDIENT
PROCESSING OF CLAIMS.**

Performance Objectives

- Competent and responsive service to stakeholders
- Foster stakeholder knowledge of rights and responsibilities under the Workers' Compensation Act
- Prompt delivery of statutory benefits including medical services and indemnity payments
- Stakeholder involvement in the development of policy and delivery mechanisms
- Provide the public and policy makers with accurate and current indicators of program performance
- Anticipate changes in the program environment and respond appropriately



No individual in the United States shall, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any program or activity under the jurisdiction of the Kentucky Labor Cabinet.

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This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.

December 15, 1999

Dear Governor Patton:

It is my privilege to submit the Kentucky Department of Workers' Claims Annual Report for Fiscal Year 1998, prepared in accordance with the provisions of KRS 342.435.

Highlighted in this report are initiatives DWC has taken during the fiscal year, implementing the administrative and adjudicative provisions of the Workers' Compensation Act (KRS Chapter 342).

Our accomplishments are attributable to the combined efforts of the Department's experienced and talented team, working cooperatively with a far-reaching network of public and private sector entities.

The fiscal year has been marked by stability in the number of new claims filed for resolution of compensability. Compensation insurance premium levels declined, reflecting lower rates for most of the Commonwealth's employers. Due to strengthened regulations of self-insureds, together with a prosperous economic climate, there have been no bankruptcies of self-insured employers which would reduce the flow of the stream of benefit payments to employees of those businesses.

While many facets of the complex workers' compensation program are stable, considerable turmoil exists in the program environment produced by continuing legal challenges to provisions of House Bill 1 (Extraordinary Session December 1996) and ingrained resistance to program changes HB1 envisioned.

Determined to capitalize on our experience, DWC is committed to maintaining Kentucky's leadership position, delivering superior service in support of a non-adversarial workers' compensation system.

Very truly yours,



Walter W. Turner



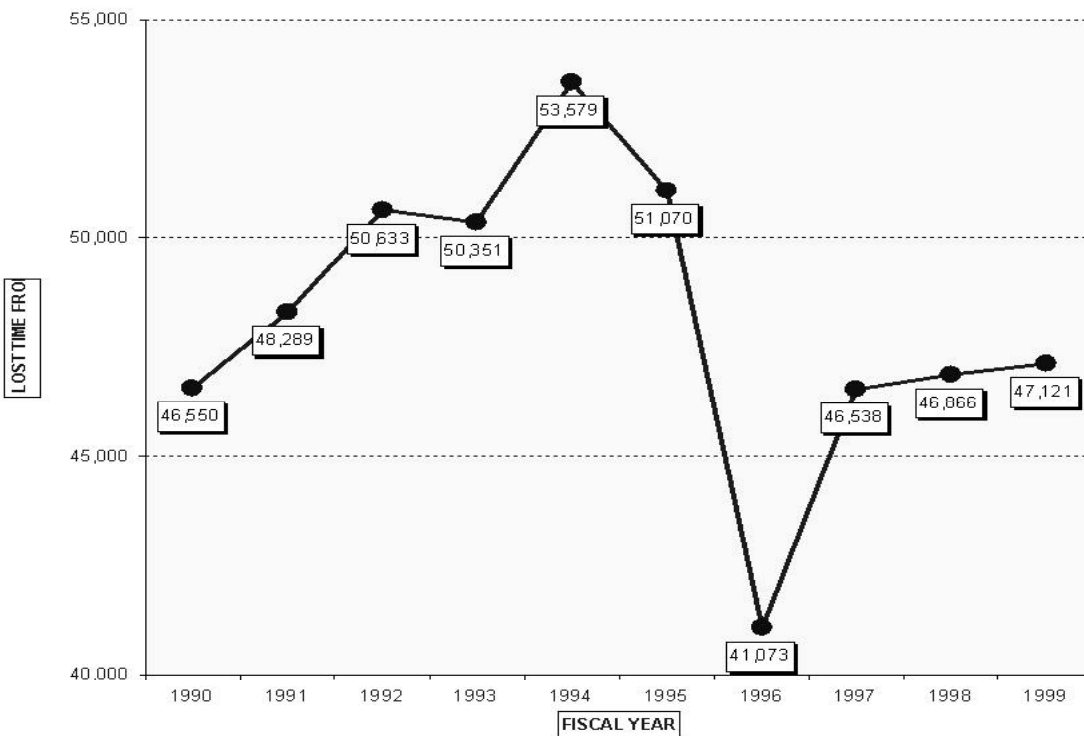
Program Overview

The Department of Workers Claims (DWC) in the Labor Cabinet administers the Kentucky workers' compensation program (Kentucky Revised Statutes, Chapter 342) which provides benefits to employees injured in job-related accidents and to those who contract diseases due to exposures occurring in the workplace. Benefits include payments for lost income, the expense of medical treatment, and new job training. In Fiscal Year 98 (July 1, 1998 - June 30, 1999), 48,693 Kentuckians were injured on the job or became ill from job-related exposures. Of these, 47,121 caused the injured worker to

miss more than one day of work. This compares to 46,866 in FY97 and 46,538 in FY96.

Through the workers' compensation program, a lump-sum payment of \$25,000 is made to an employee's estate in the event that the death occurred as a result of a work-related injury. Income benefits are also extended to the surviving spouse and dependents. In FY98, there were 78 Kentuckians killed on the job, compared to 82 in FY97 and 77 in FY96.

LOST TIME FIRST REPORTS OF INJURY BY FISCAL YEAR



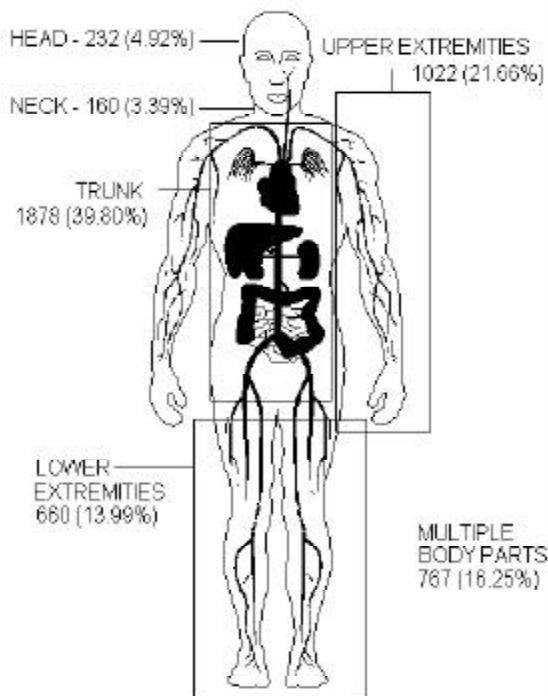
Workers' compensation claims are typically divided into two classes, *indemnity* and *medical-only*, a distinction that is used in this report. Indemnity claims are those in which disability income benefits are paid to compensate for lost wages, functional impairment, or death. Typically, medical costs are paid in addition to disability payments. In order for an injury to be compensable, it must be caused by the employee's work. To be considered for indemnity benefits, an injured worker must miss more than seven days of work. Medical-only claims are those wherein medical services are delivered but the employee does not qualify for disability payments. Most of the data in this report pertains to indemnity claims. Presently there is no requirement that employers or their insurance carriers report medical only claims to DWC.

AWARDS AND AGREEMENTS FY98

Result	#
Awards	3,270
Agreements	2,914
Dismissals	1,124
Prelitigated Agreements	3,120

In FY98, there were 4,719 claims filed with DWC. This number has been steadily declining over the past six years. Of the total claims filed, 4,228 were the result of injuries, 210 were from occupational diseases other than Coal Workers Pneumoconiosis (CWP), 162 were from CWP, and 119 were hearing loss claims.

CLAIMS BY BODYPART FY98



Claims include arbitrator acknowledgements/assignments and reopenings from the motion docket.

The most common injuries (61%) reported by Kentuckians in FY98 were the outcomes of strains or falls. Muscle or tissue damage was the nature of the claims most often filed, with 2,573 or 55%. The body parts affected in the majority of claims were the trunk (1,878), and the upper extremities (1,022), for a combined total of 61% of all claims.

The majority of these claims (3,146) were filed by men. The occupational group reporting the most claims (1,985) was Operators, Fabricators and Laborers which includes machine operators, metal and woodworking employees, welders, and production workers. The Precision Production, Craft and Repair occupations reported the second highest number of claims filed (1,159). These include mechanics, machine repairers, construction workers, machinists, textile personnel, and food production workers.

CLAIMS BY INDUSTRY FY98

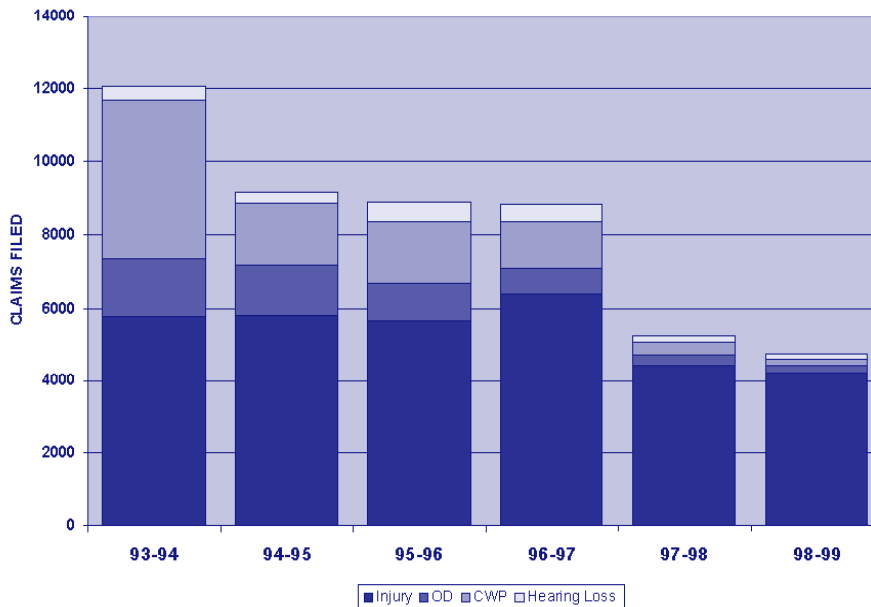
The counties representing 43% of the total claims filed in Kentucky were Jefferson (883), Pike (367), Fayette (287), Harlan (162), Perry (119), Laurel (110), Floyd (104). Kentuckians working out of state filed over 200 claims.

Based on the U.S. Bureau of Labor Statistics' Standard Industrial Classification Code, the industries with the most claims filed in FY98 were manufacturing, services, and mining for a combined total of approximately 62%. Construction and retail trade industries followed with 20%.

Fifty percent of the claims filed in FY98 were from injured workers in the 30-44 year old age range, and 25% were in the 45-54 year old age range. Four percent were filed by those age 22 and under and 14 claims were filed by workers 70 years of age or older.

Standard Industrial Classification (SIC) Range	# of Claims
Agriculture, Forestry, Fishing	50
Mining	841
Construction	484
Manufacturing	1152
Transportation/Public Utilities	426
Wholesale Trade	161
Retail Trade	475
Finance, Insurance, Real Estate	51
Services	864
Public Administration	143
Unclassified	72
Total	4719

CLAIMS FILED BY FISCAL YEAR 93-98



	93-94	94-95	95-96	96-97	97-98	98-99
Injury	5743	5785	5629	6385	4408	4228
OD	1613	1412	1061	713	281	210
CWP	4359	1655	1662	1265	363	162
Hearing Loss	351	332	530	439	163	119
Total	12066	9184	8882	8802	5215	4719

Work Related Fatalities FY98

During FY98, a total of 78 work-related fatalities were reported to the Department. Deaths occurred in every industrial segment except agriculture/forestry/fishing. Generally, agricultural workers are excluded from workers' compensation coverage; thus, farm fatalities are not reported to the Department.

The distribution of workplace deaths in Kentucky by industrial segment comports with the nationwide census of fatal occupational injuries. Nationally, the construction industry reported the highest number of injuries resulting in death. In Kentucky, the construction industry accounted for one-fourth of the fatality totals for the year. Six of these 19 deaths were motor vehicle/heavy equipment related.

Mining was the second most lethal industry (but first in terms of fatal incidents per 10,000 workers), making up one-fifth of the fatality totals. Seven of the 15 mining deaths were

the result of falling rock/earth and three were motor vehicle related.

In the manufacturing industry, one-fourth of the deaths were attributed to falls, another one-fourth were motor vehicle related. One half of the fatalities in the transportation, communication & public utilities, and service industries were motor vehicle related.

Violence in the workplace frequently appears in the retail industry. However, Kentucky had only two incidents during the fiscal year in which workers were shot and killed. In the public administration sector, two deaths were fire related. Motor vehicle accidents were the leading cause of all fatalities; 21 of the 78 reported deaths (27%). Eleven workers were killed by falling objects and nine died in falls. Eight deaths were fire or electric current related.

FATALITIES BY INDUSTRY FY98

INDUSTRY	TOTAL NUMBER OF WORKERS	FATALITIES
MINING	22,904	15
CONSTRUCTION	83,699	19
MANUFACTURING	319,958	12
TRANSPORTATION, COMMUNICATIONS, PUBLIC UTILITIES	97,399	8
WHOLESALE	418,271	2
RETAIL	68,766	8
SERVICES	392,498	8
PUBLIC ADMINISTRATION	234,822	6
GRAND TOTAL	1,655,294	78

OCCUPATIONAL FATALITIES BY AGE GROUP FY98

Number of Deaths	Age Range
18	18 - 29
23	30 - 40
15	41 - 51
16	52 - 60
5	65 and older

Fifteen percent of the workplace fatalities were the result of heart failure; subsequently, seven of the 11 heart attack deaths were determined not to be work-related. Absorption, ingestion or inhaling of foreign substances attributed to four deaths. Three workers were caught in or crushed by machinery or equipment and three workers were killed by an earth slide.

Six of the fatalities were female; 72 male. The overall average age was 41.

Compared to last fiscal year, the work-related fatality rate in Kentucky has declined slightly. The Commonwealth has been ranked third highest in the nation in penalty assessment, per serious citation for conditions creating a substantial probability of death or serious physical harm to workers.

FATALITIES BY INDUSTRY AND COUNTY FY98

INDUSTRY	FATALITIES	COUNTY OF EMPLOYER (NUMBER OF FATALITIES)
MINING	15	FLOYD (3), HARLAN (3), HOPKINS (2), PENDLETON (1), PIKE (2), WHITLEY (2), OUT OF STATE (1)
CONSTRUCTION	19	ADAIR (1), BATH (1), BOONE (1), BOURBON (1), FAYETTE (2), FLEMING (1), GRAVES (1), HARDIN (1), JEFFERSON (4), JOHNSON (1), PERRY (1), POWELL (1), TAYLOR (1)
MANUFACTURING	12	FAYETTE (1), FRANKLIN (1), HENDERSON (1), JESSAMINE (1), JEFFERSON (3), LETCHER (1), OHIO (1), SIMPSON (1), TAYLOR (1), WARREN (1)
TRANSPORTATION, COMMUNICATIONS, PUBLIC UTILITIES	8	BELL (1), BOONE (1), CALLOWAY (1), HENRY (1) JEFFERSON (1), SCOTT (1), OUT OF STATE (2)
WHOLESALE	2	FAYETTE (1), LAUREL (1)
RETAIL	8	FAYETTE (1), HARDIN (1), HART (2), HENDERSON (1), JEFFERSON (1), UNION (1) WHITLEY (1)
SERVICES	8	BREATHITT (2), FAYETTE (1), HARLAN (1), JEFFERSON (1), KENTON (1), OUT OF STATE (2)
PUBLIC ADMINISTRATION	6	CHRISTIAN (1), JESSAMINE (1), MERCER (2) ROWAN (2)
GRAND TOTAL	78	

Office of the Commissioner

The Commissioner, under statutory authority, heads DWC, supervises its employees, and carries out all administrative functions of the agency including promulgating regulations related to the workers' compensation program and reporting to the Governor, Secretary of Labor, and Legislature. The Commissioner, Walter W. Turner, is assisted by Deputy Commissioner Willie Lile who acts as chief personnel and financial officer for DWC.

Office of General Counsel

This office, which provides legal services to DWC, consists of four attorneys, one of whom, Hon. Steven B. Cox, serves as General Counsel. Recurring responsibilities include assuring employer insurance coverage through the preparation of citations and injunctive actions; investigating allegations of improper claims adjustment activities; presentation of unfair claims settlement practice complaints; analyzing open records requests, researching and drafting law analysis reports, regulations, and statutes; and participating in public hearings. In FY98, 20 unfair claims settlement practices hearings were held and \$33,100 was collected in fines. An additional 12 show cause hearings were held for other violations resulting in penalties totaling \$7,650.

FISCAL ACTIVITY FY98

BUDGET ENTRY	AUTHORIZED	EXPENDED	FY BALANCE	% ALLOCATION
PERSONNEL	11,724,000	10,112,342	1,611,658	86.3%
OPERATING	3,150,000	2,146,425	1,003,575	68.1%
CAPITAL EQUIPMENT	120,000	239,367	(119,367)	199.5%
TOTAL	14,994,000	12,498,135	2,495,866	83.4%

The number of full-time DWC personnel positions at the close of FY98 was 211, 78% of the Department's approved staffing level.

Office of Administrative Services:

The Office of Administrative Services, under the direct supervision of the Deputy Commissioner, serves as the logistical support unit for the Department. Essential activities include:

- purchasing and distributing supplies and services
- providing maintenance and security for facilities and equipment
- auditing and processing of invoices, requests for reimbursement, and travel expense vouchers
- filling publication orders and disseminating printed materials
- coordinating mail, supply, and equipment pickup and delivery
- coordinating fiscal activities with the Finance and Administration Cabinet
- securing leases of real property for DWC's field personnel
- assisting in preparation of DWC's budget and tracking expenditures

Workers Compensation Board (WCB)

The WCB consists of three members who are full time employees of DWC (Hon. Larry Greathouse serving as Chair) appointed by the Governor to four-year terms. Board members hold the qualifications of appeals court judges (except for residence in a district). A decision concurred in by two members constitutes a decision of the Board.

During FY98 the WCB received 570 appeals from ALJ decisions and disposed 580 appeals. During this period, the WCB rendered 515 decisions, 204 decisions were appealed to the Court of Appeals and 148 were appealed to the Kentucky Supreme Court. Under House Bill 1, the WCB will be abolished as of July 1, 2000. Thereafter, the Kentucky Court of Appeals will directly receive appeals of ALJ decisions.

Division of Arbitration

Arbitration is the first level in the adjudicatory claims resolution process. Arbitrators are required to render a decision within 90 days of claim assignment. Continuing medical treatment and delays in obtaining medical reports impact the arbitrators' ability to comply with the 90-day decision requirement.

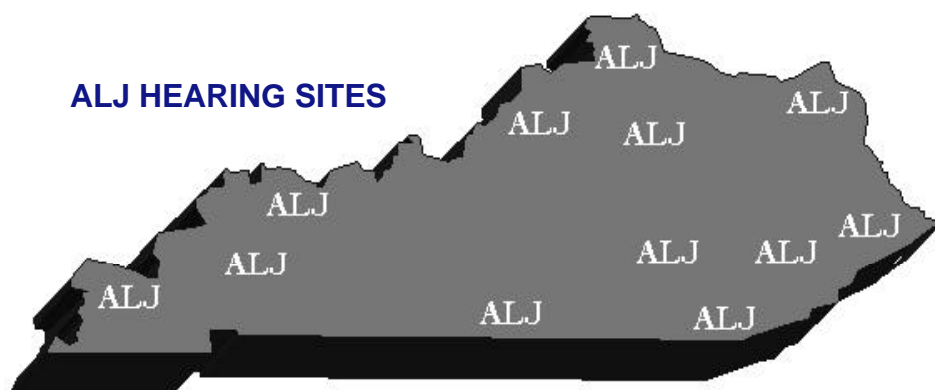
The Division consists of eight arbitrators and support staff with one arbitrator serving as Chief. Arbitrators are assigned claims in one of six geographical regions of the state for a period of sixty days, working on a regional rotation schedule. Through June 1999, arbitrators held 2,900 benefit review conferences with a settlement ratio of 33% of the claims resolved.

Adjudication

— Administrative Law Judges

There are currently 14 Administrative Law Judges, one of whom serves as the Chief and reports directly to the Commissioner. With a combined total of 108 years of experience serving in this capacity, the ALJs have offices in Fulton, Henderson, Danville, Louisville, Frankfort, Lexington, Mt. Sterling, Richmond, Pineville and Pikeville. Through June 30, 1999, the ALJs issued 1,581 opinions and also issued decisions and orders on any cases remanded from the Workers' Compensation Board, the Court of Appeals and the Kentucky Supreme Court. Finally, the ALJs heard 164 appeals from the arbitrator motion docket and 2,161 appeals from the arbitrator level.

In addition to their regular duties, the Administrative Law Judges serve as acting arbitrators on a six-month rotation. In this capacity, they held 2,385 benefit review conferences and issued more than 1,000 benefit review determinations.



ALJs hold informal conferences and hearings at sites located in Pikeville, Ashland, Covington, Hazard, Pineville, London, Lexington, Louisville, Bowling Green, Owensboro, Madisonville and Paducah.

The Division of Security & Compliance, through the efforts of the Coverage, Self-Insurance and Enforcement Branches, focuses its resources on ensuring that nonexempt Kentucky employers maintain workers' compensation insurance coverage.

Self-Insurance

The Self-Insurance Branch audits group and individual self-insured employers and processes new and renewal applications for self-insurers. The auditors continue to utilize independent resources, including various regional and national newspapers, business periodicals, and Dun & Bradstreet to obtain advance recognition of self-insured employers whose financial condition does not warrant the privilege of self-insurance.

Three group audits (Workers Guardian SIF, School Boards SIF & KESA) were finalized and the fieldwork was completed on the audit of Forest Industries Self-Insurance Fund. Annual renewal applications were received from the Kentucky League of Cities and the Kentucky Association of Counties (KACO). During FY98 there have been no insolvencies of self-insurers to impact any of the guaranty funds.

The Watch list for the self-insured companies decreased from 13 companies in FY97 to only 9 companies in FY98. There was also a decline in the number

of individual self-insurers from 224 in FY97 to 214. The number of self-insured groups remained stable at 10.

HB1 established three guarantee associations, the Kentucky Individual Self-Insured Guaranty Fund, the Kentucky Group Self-Insured Guaranty Fund, and the Kentucky Coal Employers Self-Insurance Guaranty Fund. The purpose of these funds is to protect workers and their dependents in the event of insolvency of a self-insured. During FY98 there have been no insolvencies of self-insureds to impact any of the guaranty funds.

SERF (South East Coal Restoration Fund)

During FY97, the SERF was divided into long-term and short-term investments intended to extend the period of payments to claimants. The initial analysis in FY98 of this change in investment policy indicates that the fund, established to distribute workers' compensation benefits to the injured employees of the bankrupt South East Coal, anticipates paying all indemnity benefits to conclusion.

Coverage

The Coverage Branch maintains records documenting workers' compensation insurance coverage for Kentucky employers. Approximately 300 insurance companies, including the competitive state fund, Kentucky Employers' Mutual Insurance Company (KEMI), insure the Commonwealth's employers.

During FY98, the Department purchased a license to use an Internet option developed by Workers' COMP-LINK permitting direct reporting of proof of coverage information to Kentucky. This procedure provides an immediate acknowledgment to the carrier that the POC information was successfully transmitted to DWC followed by an acknowledgment twenty-four (24) hours later informing the carrier of acceptance or rejection of the transaction.

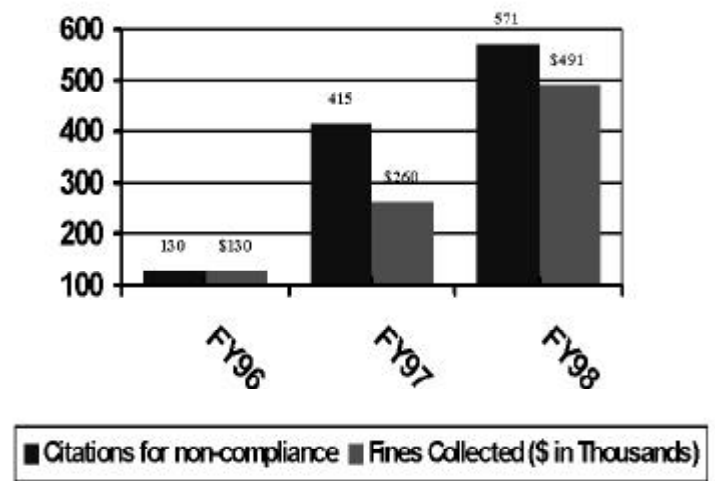
Beginning January 1, 1998, the Coverage Branch began receiving filings of workers' compensation insurance coverage from the National Council on Compensation Insurance (NCCI) through Electronic Data Interchange (EDI). During FY98, DWC received 679,939 records from NCCI of which 173,550 failed technical edits. Of the 506,389 records that passed the technical edit, the Coverage Branch accepted 113,979 and rejected 392,410 transactions. In addition, the Branch processed 2,082 Workers COMP-LINK transactions and 1,673 coal transactions. The number of rejected transactions for Workers COMP-LINK was 311 and 1,155 coal transactions were rejected.

On June 1, 1999, Commissioner Turner notified all carriers that the Department of Workers' Claims was terminating NCCI's exclusive designation as the proof of coverage data collection agent effective October 1, 1999. This decision created opportunities for other companies to act as data collection agents in a competitive way that would foster a process by which proof of coverage data will be more accurate and timely, thus enhancing an existing database that requires reliability. Before the end of June, 1999, three companies, Celerity Technologies, Inc., Workers COMP-LINK, and Unicom Communications, expressed their intent to submit to a series of tests set forth by DWC personnel to ensure compliance with IAABC (International Association of Industrial Accident Boards and Commissions) standards in a production environment by October 1, 1999.

Enforcement

This year the DWC compliance officers inspected 9,990 Kentucky businesses to verify compliance with the Workers' Compensation Act. Of the 9,990 investigations conducted,

ENFORCEMENT ACTIVITY FY98



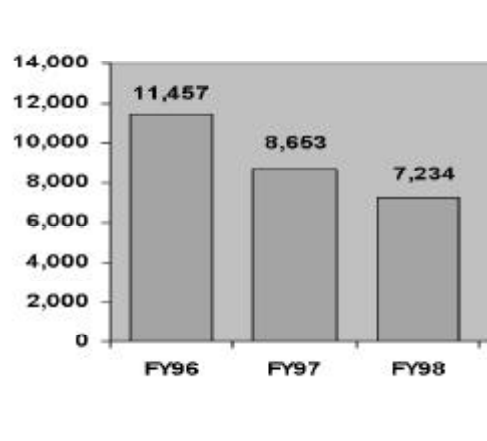
1,207 employers warranted further review resulting in the Department of Workers Claims issuing 571 citations. The total amount of penalties assessed for this fiscal year was \$895,600 and fines amounting to \$490,597 were collected.

The Enforcement Branch is responsible for monitoring the filing of Form-4 Employees Notice of Rejection of the Workers Compensation Act. Since HB1, filings of rejections have decreased. The number of rejection notices filed with the Department of Workers Claims declined during FY98 to 7,234.

Enforcement personnel also conducted research into the utilization of electronic handheld devices for better information

management within the Branch. The compliance officers tested the selected electronic devices in the field and are now successfully submitting test reports electronically from their field offices to the main office in Frankfort.

REJECTION NOTICES FILED FY98



DIVISION OF CLAIMS PROCESSING

The Claims Branch receives and processes applications for resolution of claims; assigns claims to arbitrators and ALJs; processes agreements regarding attorney fee motions, and employee disability status reports; notifies disabled workers of statutory limitations for filing a claim; processes medical fee dispute requests and chiropractor peer review filings; maintains and updates the physicians' medical qualifications index; prepares weekly Frankfort motion dockets; processes orders; compiles arbitrator and ALJ decisions; and maintains the database for all of the above filings.

The Appeals Branch is responsible for processing all documents and records upon claims appealed from ALJ decisions to the Workers Compensation Board (WCB), the Kentucky Court of Appeals, and the Kentucky Supreme Court. During FY98, the number of claims appealed to the Workers Compensation Board was 631; 215 to the Kentucky Court of Appeals; and 161 claims were appealed to the Kentucky Supreme Court.

Division of Ombudsmen & Workers Compensation Specialists

WORKERS COMPENSATION SPECIALISTS ACTIVITY:

Requests for assistance: 11,153
Requests for assistance completed: 10,000
Intervention requests: 1,527
Intervention requests completed successfully: 843
Assisted claims filed: 121
Other forms of assistance: 129

During FY98, the Division of Ombudsmen and Workers Compensation Specialists continued their proactive efforts to provide assistance and information regarding workers' compensation, fielding over 22,500 calls combined. Most of these assistance requests were completed within one week of the initial contact.

The Kentucky Supreme Court issued an important decision on December 17, 1998 determining that specialists employed by the Department of Workers Claims were not engaged in the unauthorized practice of law. This overturned a prior conclusion reached by the Kentucky Bar Association. This decision was predicated on the fact that specialists, like paralegals, are closely supervised by an attorney.

The unique services of the specialist program were recognized in the *BNA's Workers Compensation Report* of April 12, 1999. The article focused on the successful intervention efforts of the specialists.

The Specialist Branch intervened in over 1500 workers' compensation situations and resolved

over 55%. During this process, specialists assisted over 200 callers in gathering information and completing claim applications.

The attorneys on staff in the Specialist Branch initiated over 80 unfair claims settlement practice investigations during FY98, completing reports in 70. An additional 19 reports from pending cases from FY97 were completed.



The Division implemented a new computerized "Request for Assistance" program in the second quarter. This system was designed in an effort to track calls for assistance and eliminate duplication of service delivery. It also enables DWC to gather statistical information on assistance requests.

Since the inception of the specialist program two and a half years ago, the specialists have assisted 326 injured workers in filing claims. Of the 177 claims now final with no attorney representation, specialists assisted 44 workers in receiving income benefit awards or settlements with an average value of \$8100. Specialists also assisted workers in receiving over 52 awards for medical benefits or temporary total disability. Specialists also provided intervention in 114 reported work-related deaths to help secure prompt delivery of benefits to survivors. In situations where benefits were paid, an average payment within 39 days was achieved.

OMBUDSMEN ACTIVITY:

NUMBER OF REQUESTS RECEIVED	11,397
COMPLETED	10,835
PRIOR MONTH COMPLETED	1,999
PENDING	1,548

TYPE OF CALL:

TOTAL:	11,397
CLAIMANT	5,676
CARRIER	1,355
OTHER	1,188
ATTORNEY	1,122
EMPLOYER	984
MEDICAL PROVIDER	765
GOVERNMENT OFFICIAL	195
MEDICAL REVIEW	112

SUBJECT BREAKDOWN OF CALLS:

TOTAL:	14,880
PROCEDURAL QUESTIONS	5,218
LEGAL QUESTIONS	2,002
INFORMAL MEDIATION	1,941
COVERAGE	1,461
CLAIMS STATUS INQUIRY	992
OTHER	944
REFERRAL TO OUTSIDE AGENCY	820
MEDICAL FEE SCHEDULE	545
FIRST REPORT OF INJURY INQUIRY	300
MEDICAL FEE DISPUTE	296
UTILIZATION REVIEW	135
MANAGED CARE	112
REHABILITATION	62
FRAUD	55

Utilization Review

Utilization Review (UR) is the review of medical treatment, by appropriately qualified medical personnel, to insure that treatment is reasonable and necessary. In an effort to improve program performance, amendments to the regulation occurred in December 1996, and June 1998. April 1999 marks the end of the third operational year for utilization review programs mandated by House Bill 928. The program has moved from a "start-up" phase to a maturation phase. Initially, the department invested resources to promulgate regulations and approve UR programs. Next, the Department focused on compliance of carriers and self-insured employers. During this fiscal year, DWC's efforts turned to utilization review programs' quality of performance.

Utilization review programs were audited for quantitative and qualitative performance. Quantitative analysis revealed that greater than 80% of medical treatment is approved during initial

utilization review. Qualitative analysis indicates that UR reports often fall short of regulatory requirements.

Enhancing credibility of the UR process was the focus of a Utilization Review Conference sponsored by DWC and presented in May 1999. Healthcare consultants Milliman & Robertson (M&R) assisted DWC in the planning and presentation of the conference. M&R offered national perspective and commentary to local issues identified by numerous stakeholders in the utilization review process. Attendees participated in a question and answer session that helped link conference presentations to issues arising during the administration of claims.

For a copy of written materials or video tape of the conference contact Donna Elsen Floyd, (502) 564-5550 ext.488.

University Medical Evaluations

As mandated by HB1, DWC has contracted with the University of Kentucky and the University of Louisville medical schools to perform evaluations of employees maintaining workers' compensation claims. Referral is mandatory for occupational disease and hearing loss claims and is optional in traumatic injury claims. During FY98, medical schedulers coordinated evaluations for 524 claims, a decrease of 31% from FY97. This decrease was due in part to a corresponding reduction in the number of hearing loss and occupational disease claims. Forty-five claimants were not evaluated due to settlements, dismissals, and claims being held in abeyance. A total of 509 completed medical evaluation reports were received during the same period.

UNIVERSITY MEDICAL EVALUATIONS FY98

Type of Evaluation	University of Kentucky	University of Louisville
Injury (all)	154	136
Hearing Loss	66	41
BL	41	28
RIB	20	23
Asbestosis	4	3
Silicosis	1	0
Fumes/Chemicals	1	3
Contagious Disease	1	0
Dermatitis	1	0
Lead Poison/Liver Disease	1	0
Asthma	0	0
TOTAL	290	234

Managed Care

The administrative regulation, 803.KAR 25:110, establishing the standards for managed care plans was adopted in July of 1994. In addition to setting forth parameters for managed care, there are standards set for each approved managed care plan with respect to data reporting. The Department of Workers Claims is developing a database to automate the review process. This will serve as a crucial tool in monitoring the plans and will greatly reduce the manual intervention that has heretofore hindered our ability to assess performance.

By the end of FY98, 38 managed care plans had been approved, three (3) of which closed. Of the remaining 35 plans, six (6) were not operational (had not yet enrolled a single employer), leaving 29 managed care plans serving approximately 42% of Kentucky's workforce.

Carriers and self-insured employers were advised that the use of PPO's (Preferred Provider Organizations) outside of enrollment in an approved managed care plan was contrary to the intent of KRS 342.020. Using an approved managed care plan is the only means by which employers can direct employees to appropriate care; therein, the employee's choice of provider within the plan network is preserved.



Vocational Rehabilitation Training

KRS 342.710 states 'an employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining...'

Challenged to improve its delivery of service system, the Department of Workers' Claims has made remarkable progress this year in the Rehabilitation Training Section. In 1998-99, there was a marked decrease in the average time elapsed at two critical junctures of the system.

The time frame spanning from the date of the order for a rehabilitation evaluation to the actual evaluation was cut from an average of nine months to three months.

Another area in which time has been cut drastically is the time between the date

that rehab was ordered to the date the case was closed. In 96-97 and 97-98, the time frame was 22 and 21 months; in 98-99, this was cut to 12 months.

Kentucky law allows for 52 weeks of vocational rehabilitation, training, treatment or service to be paid for by the insurer/self insured employer. This period may be extended in unusual cases by special order. Additional benefits include reasonable cost of board, lodging and travel, also paid for by the employer or insurance carrier.

Rehab staff becomes involved at the conclusion of a claim, when the Arbitrator or Administrative Law Judge sends to the Rehab section a copy of the Rehab Order. Workers' compensation specialists contact the insurer to obtain authorization for the vocational evaluation and the rehab supervisor contacts the injured worker to develop a plan for retraining. Once authorization is received, the injured worker is notified and the evaluation is scheduled. Evaluation results are then reviewed with the injured worker and all options are considered.

The rehab supervisor also works closely with other state agencies such as the Workforce Development Cabinet (Department of Vocational Rehabilitation, Department for Employment Services) and the Cabinet for Families and Children (Department for Social Insurance, Department for Social Services) in the pursuit of retraining opportunities for the injured worker.

In 1998-99, there were 317 rehabilitation cases closed. In 272 cases, the status of the injured worker was unemployed or unknown, as well as retired or even deceased. In reviewing a sampling of these cases, the majority of occupations was that of laborer and there were more male injured workers than female. Several of the cases were closed when rehab was not ordered on appeal and in several instances, the injured workers were participating in retraining.

There were 45 rehabilitation cases closed with the injured worker reemployed. The majority of these injuries (27) were back related; the second largest incidence was leg/foot injuries (11). There were 13 females and 32 males. The average age was 37.



The occupation hit hardest with injuries was that of laborer; a total of 15 injuries were incurred by carpenters and construction workers, iron workers and drywall hangers. Assembly line workers/machine operators followed, with 9 injuries.

Truck drivers and coal miners were the third most prone to injury, with four cases each. Other occupations represented included clerks, heavy equipment operators, nursing assistants, a rail inspector and a flight attendant.

Eight of these 45 injured workers were out of state residents. The 37 Kentuckians were from all parts of the Commonwealth – from Graves and McCracken counties in the west to Boyd and Pike counties in the east ... from Campbell and Kenton counties up north to Allen and Whitley counties down south. They came from highly populated counties such as Jefferson as well as from counties with a workforce of less than 2,000 such as Edmonson, Green and McLean.

As is the case with several other states that have recently enacted major reforms in their workers' compensation law, Kentucky continues to struggle with the challenge of measuring the impact of the reform changes on vocational rehabilitation.

Medical Fee Disputes

During FY98, 485 Requests for Resolution of Medical Dispute were filed with the Department and assigned to Arbitrators for initial resolution. In an effort to obtain information regarding the source and type of disputes over the delivery of health care services, DWC researchers examined 100 recently resolved claims, extracting from claim file documents dozens of data fields.

Findings included the fact that 90% of the proceedings to contest services are filed by insurance carriers/self-insured employers, while 9% are initiated by employees attempting to obtain services or payment for medical care previously received. Infrequently (1%) medical providers initiate the filing to collect payment. Explanation of why carriers/self-insured employers file the bulk of the applications lies in statutory provisions and case law that requires the carrier/self-insured to either pay bills submitted for treatment of injured workers within 45 days or file a contest with DWC. Often the amount of money purportedly due for medical services is not great. Upon disputes where a dollar value was stated, over half (53%) were less than \$1,000.

Most frequently (62% of the time), the underlying issue leading to the request for resolution was whether the medical services were rendered to treat a work-related injury compensable under the Workers Compensation Act. Carriers/self-insured employers asserted in these claims that either there was no work-related injury or that the treatment was not for the effects of the injury. The second leading issue was whether or not the proposed or rendered treatment was "medically necessary." In these claims, carriers effectively conceded the occurrence of a work-related injury.

Twenty-nine percent of the disputes were settled. Upon those submitted for adjudicator determination, the employee and the carrier/self-insured prevailed with virtually equal frequency, 48% to 47% respectively. Five percent of the claims were marked by a split decision evidenced by the medical services/bills being approved in part and denied in part.

Utilization review of the medical services by a vendor retained by the carrier was evident in only 44% of the sampled claims. The relatively low incidence of utilization review is not surprising in light of the finding that the leading issue is "compensability." When compensability of the purported work-related injury is legitimately at issue, referral to utilization review is not required as presumptively the carrier is not going to pay for treatment irrespective of it being "medically necessary." Recommendations of utilization reviewers with respect to whether or not treatment was medically necessary comported with the ultimate determination of the adjudicator 55% of the time.

Analysis failed to reveal any clear cut indication about the type of medical services most likely to become disputed. General physician and hospital services were at issue 40% of the time, followed by pharmaceutical charges (16%), surgical (13.1%), diagnostics (12.2%), and chiropractic care (11%). Although physical therapy is prescribed extensively for work-related injuries, DWC's sampling of disputed medical services demonstrated that physical therapy services were the subject of only two percent of the challenges.

Redesign

During FY98, the Division of Information and Research continued to improve and enhance data systems utilized by DWC. A comprehensive system redesign project was implemented which involved reprogramming all data retrieval programs used by agency personnel as well as redesigning DWC databases. Redesign was initiated to improve the quality of data resident in DWC databases, assure Y2K compliance of all DWC information systems, simplify retrieval of information by agency personnel, and move agency programs and files from the DIS administered main-frame environment to the AS/400 maintained by the Labor Cabinet. All of the preliminary testing and design was completed during FY98 and on July 1, 1999 the redesigned system was put into full production.



Technical Services Branch

The technical support staff expanded the Wide Area Network (WAN) to include new Local Area Networks (LAN) in the DWC's Lexington, Pikeville and Pineville offices. Among other benefits, these additions make possible file sharing, e-mail service, and AS/400 client/server communications between the Frankfort office, the Louisville office and these field offices.

Additionally, technical support staff transitioned from the Novell NetWare Networking environment to the Microsoft NT 4.0 operating system on most DWC PCs. This transition has improved connectivity to other agencies and improved speed and functionality of the WAN. New software and hardware have been installed to improve network reliability and assure Y2K compliance. Many Y2K noncompliant legacy systems were removed and replaced during FY98.

Benchmarking

According to KRS 342.038, every employer must keep a record of any injury received by employees in the course of their employment. Within one week after the occurrence and knowledge of the injury, a report must be rendered to the DWC. An employer's insurance carrier or other party responsible for workers compensation payments is obligated to report to the DWC within one week of receiving the notification of injury.

In an effort to monitor compliance with this statute and to improve performance where necessary, DWC issued the second series of Report Cards on carrier performance dealing with Timely Filing of First Reports of Injury in September, 1998. Each carrier reporting an injury between July 1 and December 31, 1997 received an individualized report card. Over 400 carriers, self-insureds and third party administrators received report cards. The report cards revealed that approximately 30% of the first reports received were considered to be in compliance with the filing timeframes.

The report card program is based on data received through electronic data interchange and is dependent on the integrity of the data. The Department has worked diligently this fiscal year on the issue of data quality, encouraging carriers to take the appropriate steps to ensure that the data being transmitted is complete and valid.

Through feedback received from carriers and third party administrators through this report card process, DWC learned that:

- Carriers are working more diligently to file timely injury reports.
- Carriers have increased communication with employers, stressing the importance of timely filing of first reports of injury.
- Carriers are better educated about the law and its requirements for timely reporting.
- Carriers have become more concerned about the quality of the data they submit and are taking steps to improve their data transmissions.

DWC's report card process continues to evolve and improve. While serving as a vehicle for monitoring carrier performance, report cards also provide DWC an opportunity to give positive feedback and constructive criticism to insurance carriers, self-insureds and third party administrators in an effort to improve services to Kentucky's injured workers and insurance companies alike.

Scanning

During FY98, DWC scanned over two million pages into the document imaging system. Using imaging, multiple DWC users can retrieve documents simultaneously on-screen, decreasing the paper consumption and routing within the Department. Since the imaging system was implemented in 1996, approximately ten million pages have been scanned. This amount is equal to the paper yield from 320 50-foot trees.



Open Records

This Branch responds to requests for existing records and database contents under the Kentucky Open Records Act, KRS 61.870-884.

Pursuant to a policy effective March 1, 1995, only written records requests are filled. Many of the information requests received are from employers inquiring about job applicants' history of work related injuries. The Branch has recently automated the submission of these requests, speeding delivery of these documents. During FY98, 25,331 inquiries were processed. The Open Records Branch collected \$42,000 in charges for reproduced documents during FY98.

PROCEDURE FOR ADJUSTMENT OF CLAIMS (803 KAR 25:010)

There were amendments to this regulation effective July 13, 1998. The amendments addressed evidentiary issues, interlocutory decisions, appeals process, party designations, waivers of final hearings and changes to Form 110-1 and Form 110-0.

INDIVIDUAL SELF-INSURERS (803 KAR 25:021)

The amendments to this regulation became effective on March 19, 1999. The amendments to this regulation sets forth the following:

- (a) Requirements for contracting with a service organization
- (b) Annual filings shall include a statement of financial condition and shall be made 120 days from the end of the self-insured employer's fiscal year.
- (c) Deletion of coverage for contractors or subcontractors found in section 10(2)

GROUP SELF-INSURERS (803 KAR 25:026)

The amendments to the regulation became effective on February 18, 1999. Amendments to the regulation include the following subjects:

- (a) Investment parameters
- (b) Dividend payment plans
- (c) Increased number of trustees
- (d) Conflict of Interest Statement
- (e) Statement of Financial Condition

WORKERS COMPENSATION MEDICAL FEE SCHEDULE FOR PHYSICIANS (803 KAR 25:089)

The amendments and new fee schedule were effective November 18, 1998.

FILING OF CLAIMS INFORMATION WITH DEPARTMENT OF WORKERS CLAIMS (803 KAR 25:170)

Amendments to the regulation became effective on February 18, 1999. The amendments to this regulation include the following:

- (a) Bringing the time period for filing first reports of injury (IA-1) into conformity with KRS 342.038 (Section 2(1))
- (b) Clarification and elimination of unnecessary language (Section 2 and Section 3)
- (c) Elimination of the requirement for filing of information on medical bills denied. There is a July 1, 1999 date for collecting information on medical bills paid (Section 3).

FILING OF INSURANCE COVERAGE AND NOTICE OF POLICY CHANGE OR TERMINATION (803 KAR 25:175)

The ordinary regulation was effective April 14, 1999, replacing the emergency regulation. The amendments to this regulation give carriers an alternative when filing proof of coverage and change or termination of coverage. Now carriers may file with NCCI or electronically with DWC. Any electronic transmission of data filed directly with DWC must demonstrate its reliability in tests rendered by DWC and be approved by the Commissioner.

UNFAIR CLAIMS SETTLEMENT PRACTICE (803 KAR 25:240)

Amendments to the regulation became effective on February 18, 1999. This new regulation establishes standards for carriers to properly maintain records, documents and files; provide notice of policy provisions and information; diligently investigate claims; offer fair and equitable settlements; and provide proper and timely communications. A carrier who complies with this regulation engages in fair claims settlement practices and will avoid civil penalties pursuant to KRS 342.267.

New Law Claims Analysis

In a letter dated March 4, 1999, Representative J.R. Gray and Senator Glenn Freeman, Co-Chairs of the Interim Joint Labor & Industry Committee, requested the Commissioner to answer a number of inquiries the Committee deemed pertinent to evaluating "new law" claims. The Committee request precipitated departmental analysis of 6,064 compensation claims wherein the Request for Resolution indicated an injury or last exposure occurring subsequent to December 11, 1996, viz claims substantively governed by House Bill 1 adopted in Special Session, December 1996. Responding to the Committee's inquiry necessitated an intense research effort by DWC staff. The project revealed numerous information system deficiencies beginning with a lack of uniformity by program participants and adjudicators in setting forth precisely in agreements and awards essential data fields including functional impairment ratings. A lack of consistency was noted concerning coding and data entry. Gradual injury and combined and consolidated claims involving "new" and "old" law injuries presented particular difficulty with respect to isolating information fields.

Fulfilling the Labor & Industry Committee request ultimately required eyes-on viewing of more than 4,000 agreements and awards, a task made possible only through state of the art technology, i.e., ready access to stored records on the Department's computerized imaging system. The project was instructive as it presented in concrete form the issue of whether the data fields captured by the Department are the same fields of information pertinent to policy-makers. DWC found that the information policy-makers want and what DWC's data systems have captured are far from being a perfect fit.

The information system redesign project is expected to enhance the retrievability of data. Training of DWC personnel from data entry staff through adjudicators, as well as external participants who supply data, will improve data quality. An additional measure to be addressed is gaining the input of policy-makers in an attempt to identify information fields that are useful in measuring program performance.



Photo by John Perkins, Division of Creative Services

Results of Research:

For new law claims, the average functional impairment under the AMA (American Medical Association) Guidelines as reflected upon agreements resolving injury claims was 7.55%, while the average disability rating (functional impairment times KRS 342.730 grid factor) for injury claims resolved through agreement is 8.53%. The average functional impairment rating for hearing loss claims resolved through agreement is 10.88% while the disability rating is 8.60%.

For claims concluded through adjudication (Arbitrator benefit review determinations or ALJ opinion and awards), both the AMA functional impairment ratings and the disability ratings on average are higher, indicating that instances of less severe injury are more likely to be resolved by agreement between the workers and employer/insurance carrier. The average functional impairment upon injury claims concluded through award is 10.71% and the average disability rating is 13.95%, while for hearing loss the respective averages are 10.86% and 13.1%.

Return to work status is a measurably important predictor of whether a claim will be resolved by agreement as opposed to proceeding to adjudicator determination. When claims are resolved by agreement 75% of the time, it is stipulated that the injured employee retains both the capacity to return to the job performed at the time of injury, and in fact returned to work at the same or greater wage. To the contrary, when claims are concluded through adjudicator determination (other than dismissals) findings reflect that 38% of the injured workers retain the physical capacity to return to the same work performed at the time of injury. However, only 10% of those granted injury awards had returned to work at wages equivalent to those earned at the time of injury.

Methodology Notes:

1. Survey includes all "new law" claims filed through March 8, 1999.
2. Percentages are based on only those records wherein pertinent fields stated and exclude dismissed claims, total disability awards and settlements, and with respect to return to work status, hearing loss and occupational disease claims.
3. Awards include ALJ Opinions and Arbitrator Benefit Review Determinations as of the highest level of determination and include awards/BRDs that may not be legally final.
4. Dismissals include awards/settlements for temporary total disability benefits and/or medical services only as well as claims dismissed by agreement, absent recognition of permanent impairment/disability.
5. Pending are those claims wherein an order of disposition has not been entered.

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Additional ALJ Offices:

Danville
Henderson
Mt. Sterling
Richmond

ALJ and Hearing Site:

Fulton

Additional Hearing Sites:

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Ashland
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DWC WEB SITE: <http://www.state.ky.us/agencies/labor/wrkclaim.htm>

